

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CESAR MALDONADO-VAZQUEZ

Plaintiff

vs

CIVIL 04-1070CCC

FERNANDO E. FAGUNDO, in his official
capacity as Executive Director of the
Authority of Highways and Transportation
and in his personal capacity;
DAVID AVILES-GONZALEZ, in his capacity
as Director of the Human Resources Area of
the Authority of Highways and
Transportation and in his personal capacity;
PUERTO RICO HIGHWAYS AUTHORITY

Defendants

O R D E R

Before the Court is a Motion for Reconsideration of the Opinion and Order filed by Puerto Rico Highway Authority (PRHA), Fernando Fagundo and David Avilés in their official capacities (**docket entry 36**), and their separate request of judgment as to all defendants filed by PRHA, Fagundo and Avilés in their official and personal capacities (**docket entry 43**). The motion for reconsideration of partial judgment is DENIED since movants PRHA and Avilés have not properly focused on the retaliation claim against Mr. David Avilés in his official capacity as Director of Human Resources at the PRHA. As to Fagundo, the Court NOTES that when it entered partial judgment dismissing the 42 U.S.C. § 1983 claim against him, this was intended as a dismissal of the claims in his personal and official capacities. Therefore, there is no outstanding claim against Dr. Fagundo. In order to dispel any doubts, the Court will enter an amended partial judgment nunc pro tunc as to this defendant.

Regarding the request of judgment as to all defendants, the Court having denied the motion for reconsideration of defendant David Avilés in his personal and official capacities and that of PRHA to the extent that it could be liable for the official actions of Mr. Avilés, the same is DENIED as to these specific claims. However, in its amended nunc pro tunc judgment all claims against Mr. Fagundo in his personal and official capacities as well as against PRHA for the

CIVIL 04-1070CCC

2

discriminatory actions attributed to Mr. Fagundo regarding the First Amendment claim based on the job postings and the hiring of PDP affiliates for Human Resources Specialist position published in said postings will be DISMISSED. Accordingly, the only remaining claim in this case is the fifth cause of action of the complaint, which consists of a retaliation claim against Mr. Avilés in his personal and official capacities, and consequently against PRHA for the alleged retaliation taken by Avilés as Director of the Human Resources division of this agency.

SO ORDERED.

At San Juan, Puerto Rico, on January 24, 2006.

S/CARMEN CONSUELO CEREZO
United States District Judge